



Preserving America's Heritage

November 7, 2017

Deborah Brown
Acting Price Field Manager
Bureau of Land Management
Price Field Office
125 South 600 West
Price, UT 84501

Ref: *Review of "no adverse effect" finding
Price Office Gas and Oil Lease Sales
Emery County, Utah*

Dear Ms. Brown:

On October 17, 2017, the Advisory Council on Historic Preservation (ACHP) received the Bureau of Land Management's (BLM) request to review its finding of "no adverse effect" for the referenced undertaking. Our advisory comments were requested pursuant to Sections 800.5(c)(2-3) of our regulations "Protection of Historic Properties" (36 CFR Part 800). We have reviewed the information you provided, which included the objections from the Utah Rock Art Research Association (URARA) and private citizen Johnathan Bailey in conjunction with the Southern Utah Wilderness Alliance (SUWA), and the Hopi Tribe. Based on our review, it is the ACHP's advisory opinion that BLM has correctly applied the Criteria of Adverse Effect pursuant to 36 CFR § 800.5(a)(1). Our reasoning is as follows.

As stated in the ACHP's December 12, 2016 letter to the Vernal Field Office regarding gas and oil lease sales, a leasing decision can narrow the "broad range of alternatives" available to avoid, minimize or mitigate any adverse effects that may result from activities carried out under the lease. The ACHP believes that leasing can, in some circumstances, have an adverse effect on historic properties given that the purpose of the lease is to provide the lessee the right to use the leased land to explore for, drill for, extract, remove, and dispose of oil and gas deposits. In that letter we also emphasized that not all areas have the special sensitivity of the internationally significant historic properties of Nine Mile Canyon, the focal point of our December 2016 letter. In BLM's August 15, 2017 video conference and in the information submitted with the request for comment on their no adverse effect finding, the BLM has made clear that, within these 15 parcels (constituting approximately 32,000 acres), there is or will be adequate opportunity to locate development so that it does not adversely affect both presently known historic properties, and those that may be located in the additional survey that will be carried out on those parcels that are actually leased and included within a proposal for development submitted to the BLM. The BLM includes in the lease both the BLM's Cultural Resources Protection Stipulation and BLM-Utah's Lease Notice 68: Notifications and Consultation Regarding Cultural Resources, which together make clear that the BLM will not approve any ground disturbing activities until it completes its obligations under the NHPA through a separate Section 106 review for a site-specific proposal for development within the leased area. The submission of a development proposal would lead to additional inventory for the area of potential effects, and include additional consultation regarding the construction

ADVISORY COUNCIL ON HISTORIC PRESERVATION

401 F Street NW, Suite 308 • Washington, DC 20001-2637
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

of the well pad and associated infrastructure with Indian tribes and other consulting parties with an interest in the area. BLM may require modifications to proposals to avoid adverse effects, or decline to approve any activity where conflicts with historic properties cannot be resolved. Further, within the Rock Art Area of Critical Environment Concern, the agency will apply No Surface Occupancy stipulations to protect historic properties.

Finally, the ACHP notes that the Utah State Historic Preservation Officer's (SHPO) July 26, 2017 letter to the BLM acknowledges that the BLM "retains the right to control the actions of the lease on lease parcels," and that the BLM can use lease stipulations to "deny activities all together if cultural resources issues cannot be resolved." The SHPO goes on to say:

in the experience of the UT-SHPO, oil and gas development in Utah has led to relatively few adverse effects. Since 1997 the UT-SHPO has reviewed over 400 adverse effect determinations from dozens of agencies. During this period, the UT-SHPO has not concurred with any adverse effect calls for oil and gas leasing activity, and only five from specific federal oil and gas development projects (excluding transmission pipelines).

The ACHP finds the SHPO's long record in observing the actual effects of such activities on historic properties to be very compelling. Based on the experienced views of the SHPO, and the fact that BLM will retain control over the well pad and infrastructure placement should development move forward, the ACHP finds that the BLM's finding of "no adverse effect," is a not inappropriate determination in this case.

In order to avoid similar situations in the future where there are high levels of interest by consulting parties, we encourage the BLM to conduct robust consultations and provide as much information as early as possible to those parties. The BLM could have strengthened its consultation on these lease sales by sharing the detailed presentation made to the ACHP on August 15, 2017, as we recommended at the time, with all the parties to ensure they were aware of the agency's existing identification efforts and decision-making process. Related to that August 15 meeting, the ACHP would like to clarify that it did not request that BLM submit the objections regarding effect findings to us, but stated that if BLM and the consulting parties could not come to agreement about the findings, that the regulations direct the federal agency to submit it to the ACHP for comment.

In accordance with 36 CFR § 800.5(c)(3)(B) of our regulations, the BLM is required to take into account this advisory opinion in reaching a final decision on its finding of No Adverse Effect, and provide to the ACHP, SHPO and other consulting parties a summary of how these advisory comments were considered. Once the summary of the decision has been sent to the ACHP and other parties, the agency official's responsibilities are fulfilled for this step in the Section 106 process.

Thank you for the opportunity to comment on this dispute regarding effects to historic properties. If you have any questions or require further assistance of the ACHP, please contact the liaison to the BLM, Nancy J. Brown, FASLA, at 202-517-0209 or by e-mail at nbrown@achp.gov.

Sincerely,



Reid J. Nelson
Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation